

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

May 18, 2021

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BRENDON BIGGS, Director, Department of Public Works

BEAHTA DAVIS, Director, Regional Parks Department

SUBJECT

Easement Deed of Right-of-Way Dedication, Special Sewer Connection Agreement, and Water Quality Management Plan for the Topgolf Development in the City of Ontario

RECOMMENDATION(S)

1. Adopt Resolution declaring that the conveyance of an Easement Deed Right-of-Way Dedication to the City of Ontario for approximately 5,474 square feet of County-owned property [a portion of Assessor Parcel Number (APN) 0210-181-45], located along Archibald Avenue in the City of Ontario for public street and public utility purposes is in the public interest and that said easement conveyed will not substantially conflict or interfere with the use of the property by the County; and authorizing the conveyance of said easement to the City of Ontario in accordance with Government Code Section 25526.6, at no cost.
 2. Authorize the Chairman of the Board of Supervisors to execute the Easement Deed of Right-of-Way Dedication to the City of Ontario.
 3. Approve the Special Sewer Connection Agreement with the City of Ontario and Topgolf USA SBD, LLC for a term commencing on the date of recording, and unless earlier terminated, continuing for the duration of Lease Agreement No. 19-279 with Topgolf USA SBD, LLC, which is scheduled to expire on or about January 25, 2042, to allow Topgolf USA SBD, LLC to connect to a Cucamonga Valley Water District sewer line with sewer connection improvements, use fees, and maintenance of the improvements within the leased premises to be at the sole cost of Topgolf USA SBD, LLC and maintenance of the portion of the improvements in the public right-of-way to be at the County's cost, which will be reimbursed by Topgolf USA SBD, LLC as a one-time initial review and inspection fee not-to-exceed \$1,786 and a recurring annual inspection and maintenance fee estimated at \$426 with 3% annual escalations, and authorize the Chairman of the Board of Supervisors to execute said Agreement.
 4. Authorize the Director of the Department of Public Works to execute a Covenant and Agreement Regarding Water Quality Management Plan and Stormwater Best Management Practices Transfer, Access, and Maintenance agreement with Topgolf USA SBD, LLC, subject to County Counsel review, for a term to commence on the mutual execution of said Agreement and continue for the duration of Lease Agreement No. 19-279 with Topgolf USA SBD, LLC, which is estimated to expire on or about January 25, 2042, for the County to monitor Topgolf USA SBD, LLC's compliance with best management practices for stormwater management at the leased premises with any costs incurred by the County to enforce the agreement to be reimbursed by Topgolf USA SBD, LLC, which Agreement shall be transmitted to the Clerk of the Board of Supervisors within 30 days of execution.
 5. Authorize the Director of the Real Estate Services Department to execute any other documents necessary to complete these transactions, subject to County Counsel review.
- (Presenter: Terry W. Thompson, Director, 387-5252)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The conveyance of the Easement Deed of Right-of-Way Dedication (Easement) to the City of Ontario (City) over a portion of County-owned property (APN 0210-181-45) for public street and public utility purposes is granted for no fee. The Special Sewer Connection Agreement (Sewer Agreement) with the City and Topgolf USA SBD, LLC (Topgolf), which will allow Topgolf to connect to an adjacent Cucamonga Valley Water District (CVWD) sewer main line, will require the County to maintain, at its expense, the portion of the sewer improvements in the public right-of-way. The County's obligation will be performed by the Department of Public Works - Special Districts for which Topgolf shall pay a one-time initial review and inspection fee estimated not-to-exceed \$1,786 and a recurring annual inspection and maintenance fee estimated at \$426, the current Board-approved rate, and shall be subject to 3% annual escalations. The Covenant and Agreement Regarding Water Quality Management Plan and Stormwater Best Management Practices Transfer, Access, and Maintenance (WQMP) with Topgolf for the County to monitor Topgolf's compliance with best management practices for stormwater management will be provided by DPW with Topgolf to reimburse the County for any costs incurred by the County to enforce the WQMP.

BACKGROUND INFORMATION

This item will authorize the conveyance of the Easement to the City for approximately 5,474 square feet of County-owned property, located within Cucamonga-Guasti Regional Park (Park) along Archibald Avenue in the City of Ontario (portion of APN 0210-181-45), for public street and public utility purposes to facilitate Topgolf's construction of improvements to Archibald Avenue as a condition of development of the Topgolf sports entertainment facility. Topgolf's new facility will be built on County-owned property at the Park that is leased to Topgolf. Additionally, this item will approve the Sewer Agreement with the City and Topgolf to allow Topgolf to connect to a CVWD sewer main line, as well as authorize the Director of the Department of Public Works (DPW) to execute a WQMP with Topgolf allowing DPW to monitor stormwater management at the Topgolf leasehold for compliance with best management practices.

On April 30, 2019 (Item No. 63) the Board of Supervisors (Board) approved Ground Lease Agreement 19-279 (Lease) with Topgolf for approximately 13.70 acres of vacant land located at the southeast corner of Archibald Avenue and Fourth Street in the City of Ontario (portions of APNs 0210-181-34 and 0210-181-45) (Property), comprising a portion of the Park, for Topgolf's construction and operation of a golf entertainment facility (Project). After approval of the Lease, Topgolf began investigations under the due diligence provisions of the Lease, which was completed on March 20, 2020 and triggered the start of the construction period with rent to commence on the earlier of Topgolf's business opening or 365 days after March 20, 2020. However, as a result of the statewide lockdown in March of 2020 due to the COVID-19 pandemic, the construction did not commence. This lockdown constituted a force majeure event under the Lease lasting until January of 2021. Pursuant to the authority delegated by the Board due to the COVID-19 pandemic, the Chief Executive Officer executed Amendment No. 1 to the Lease with Topgolf on January 29, 2021 to confirm the termination of the due diligence period as of March 20, 2020, memorialize the force majeure delay period as lasting from March 21, 2020 through January 25, 2021, reset the rent commencement date to occur on the earlier of Topgolf's business opening or 365 days after the January 25, 2021, and set the performance bond, which is required by the lease, in the amount of \$1,125,609. The Board's ratification of Amendment No. 1 is a companion item on today's agenda (Item No. ~~34~~). Topgolf broke ground shortly after execution of Amendment No. 1.

Topgolf is now fulfilling its early construction development conditions and requirements, including various offsite improvements and utility connections. The Easement for public streets and public utilities to facilitate road improvements is mutually beneficial to the City and the County. Topgolf will make improvements along Archibald Avenue including adding a lane, sidewalk, curb, and gutter. The improvements will be placed in the City's roadway system with future maintenance to be performed by the City.

The Project also requires a separate Sewer Agreement because the nearest point of connection to the City's facilities is approximately 1,300 feet from the Property. The CVWD main line is adjacent to the Property and connecting to it will save Topgolf significant expense in extending sewer pipe to alternative connection points. However, because the CVWD connection point is not in the City's jurisdiction, connecting to it will require the City's consent. Topgolf will be responsible for sewer connection improvements, use fees, and maintenance of the improvements within the Property but the County will be responsible for maintenance of the portion of the improvements in the public right-of-way. The Department of Public Works – Special Districts will perform the review, inspection, and maintenance of the portion of the connection in the public right-of-way for which Topgolf will pay a one-time initial review and inspection cost estimated not to exceed \$1,786 and a recurring annual inspection and maintenance cost of estimated at \$426, which is the current Board-approved rate and is subject to 3% annual escalations. The Sewer Agreement will terminate on the earliest to occur of the following: termination of any underlying agreement between the City and CVWD, termination of the Lease, termination by mutual agreement of the parties, and on 30 days' notice due to default by either party. The Sewer Agreement was approved by the Ontario City Council on April 6, 2021.

A WQMP is required by DPW for the Topgolf development to monitor Topgolf's compliance with Best Management Practices (BMPs) for stormwater management to minimize pollutants and urban runoff. The WQMP will give DPW access to the Property to perform routine inspections and perform sampling and testing, to monitor Topgolf's compliance with BMPs, and to permit DPW to undertake any necessary repairs or preventative measures at Topgolf's cost to enforce the BMPs. The standard WQMP is typically executed after the completion of the Project. Therefore, this item requests that authority be delegated to the Director of DPW to execute the WQMP with Topgolf following completion of the Project.

In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the County as Lead Agency prepared an Initial Study/Mitigated Negative Declaration that identified and evaluated the environmental impacts of the Project. Mitigation measures incorporated in the IS/MND will be implemented and monitored by the County to ensure all potential environmental impacts will be less than significant. The Notice of Determination was posted on April 30, 2019 (Item No. 63). The Easement, Sewer Agreement, and WQMP are components of the approved Project and no additional review under CEQA is required.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Robert Messinger, Principal Assistant County Counsel, Suzanne Bryant, Deputy County Counsel and Agnes Cheng, Deputy County Counsel, 387-5455) on April 30, 2021; Department of Public Works (Brendon Biggs, 387-8040) on April 16, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404, Jessica Trillo, Administrative Analyst, 387-4222 and Elias Duenas, Administrative Analyst, 387-4052) on April 30, 2021; and County Finance and Administration (Matthew Erickson, Chief Financial Officer, 387-5423) on May 3, 2021.

(BJO: 659-4676)